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4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 JOHN ROBERT DEMOS JR,

7 Plaintiff,

8 v.

9 DONALD R HOLBROOK,

10 Defendants.

Case No. C20-5270-RBL-TLF

ORDER OF TRANSFER

11 The District Court has referred this action filed under 42 U.S.C. § 1983 to United
12 States Magistrate Judge Theresa L. Fricke. Plaintiff John Robert Demos, Jr., proceeds
13 *pro se* in this civil rights action. See Dkt. 1. The Court has reviewed plaintiff's proposed
14 complaint and finds the proper venue for this case is the Eastern District of Washington.
15 Therefore, the Court orders this case be transferred to the Eastern District of
16 Washington.

17 **I. Background**

18 In the proposed complaint, plaintiff, who is housed at Washington State
19 Penitentiary (WSP), alleges constitutional violations related to his conditions of
20 confinement at the prison. Dkt. 1. Specifically, he alleges defendant Donald Holbrook "is
21 not properly testing inmates under his jurisdiction who could be 'sleepers' and potential
22 carriers of the Coronavirus-19 [sic] disease." *Id.* He alleges defendant Holbrook is not
23 properly or adequately testing his staff who interact daily with plaintiff and other inmates
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1 and failing to adequately treat the seven inmates at WSP who have been diagnosed as
2 “carriers of the Coronavirus-19 [sic].” *Id.* Plaintiff further alleges that the lack of “social
3 distancing” in the WSP visiting room, on medical call-outs, classification and parole
4 board meetings, and the prison law library, places him in danger. *Id.*

5 Plaintiff also names “Jane Doe” the “Indeterminate Sentence Review Board
6 Chairperson” as a defendant but offers only the vague, conclusory allegation that she
7 has “deliberately sabotaged all truthful information about the spread of Coronavirus19
8 within DOC’s ranks.” *Id.* Plaintiff does not explain what he means by this or what
9 specific actions this unnamed individual has allegedly taken and how those actions
10 violated plaintiff’s rights.

11 The Court has not granted plaintiff *in forma pauperis* (“IFP”) status, nor has the
12 Court ordered the Clerk’s Office to attempt service of process. No defendant has
13 appeared in this action.

14 **II. Discussion**

15 Venue may be raised by the court *sua sponte* where the defendant has not filed
16 a responsive pleading and the time for doing so has not run. *See Costlow v. Weeks*,
17 790 F.2d 1486, 1488 (9th Cir. 1986). When jurisdiction is not based solely on diversity,
18 venue is proper in (1) the district in which any defendant resides, if all of the defendants
19 reside in the same state; (2) the district in which a substantial part of the events or
20 omissions giving rise to the claim occurred, or a substantial part of the property that is
21 the subject of the action is situated; or (3) a judicial district in which any defendant may
22 be found, if there is no district in which the action may otherwise be brought. *See* 28
23 U.S.C. § 1391(b). When a case is filed in the wrong district, the district court has the
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1 discretion to either dismiss the case or transfer it “in the interest of justice.” See 28
2 U.S.C. § 1406(a).

3 Here, it is clear from plaintiff's proposed complaint that the vast majority, if not all,
4 of the events or omissions giving rise to plaintiff's claims transpired at WSP. Dkt. 1-1.
5 WSP is located in Walla Walla County, Washington, which is in the Eastern District of
6 Washington. See 28 U.S.C. § 128(a). Further, it appears the only defendant properly
7 identified by name, and against whom any specific allegations are made, is WSP
8 Superintendent Donald Holbrook, who resides in the Eastern District of Washington.
9 See Dkt. 1-1.¹ Furthermore, it is clear that the gravamen of plaintiff's claims is that
10 COVID19 is not being properly managed at WSP and thus it appears the vast majority,
11 if not all, of the acts giving rise to plaintiff's claims transpired at WSP. Based on the
12 foregoing, it appears that venue is proper in the United States District Court for the
13 Eastern District of Washington, not in this Court. See 28 U.S.C. § 1391(b).

14 When a case is filed in the wrong district, the district court “shall dismiss, or if it
15 be in the interest of justice, transfer such case to any district or division in which it could
16 have been brought.” 28 U.S.C. 1406(a). Plaintiff is a *pro se* prisoner. See Dkt. 1. At this
17 time, the Court does not find the proposed complaint is meritless. Further, dismissing
18 the case and directing plaintiff to refile in the Eastern District of Washington would
19 cause unnecessary delay. Therefore, the Court finds transferring, rather than
20 dismissing, this case is appropriate.

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23 ¹ The Court notes that plaintiff also names “Jane Doe” the “Indeterminate Sentence Review Board
24 Chairperson” as a defendant but does not identify that individual by name and his allegations against her,
25 are too vague, conclusory, and confusing to proceed. Dkt. 1.

1 Accordingly, this case is hereby **TRANSFERRED** to the United States District
2 Court for the Eastern District of Washington. The Clerk is directed to take the steps
3 necessary to transfer this case.² In light of the transfer, the Court defers to the Eastern
4 District of Washington with respect to plaintiff's Application to Proceed *In Forma*
5 *Pauperis* (IFP) (Dkt. 1-1).

6 Dated this 8th day of April, 2020.

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9 Theresa L. Fricke
10 Theresa L. Fricke
11 United States Magistrate Judge
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23 ² An order transferring venue pursuant to 28 U.S.C. §1404(a) does not address the merits of the case;
24 therefore, it is a non-dispositive matter that is within the province of a magistrate judge's authority under
25 28 U.S.C. § 636(b)(1)(A). See *Pavao v. Unifund CCR Partners*, 934 F.Supp.2d 1238, 1241 n. 1 (S.D.
Cal., Mar. 29, 2013).